

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-224-C - ORDER NO. 2003-581
OCTOBER 15, 2003

IN RE: Application of XO Long Distance Services, Inc. for a Certificate of Public Convenience and Necessity to Expand its Telecommunications Authority to Include Competitive Resold and Facilities-Based Local Exchange Services within the State of South Carolina and for Flexible Regulation of its Service Offerings.) ORDER GRANTING) MOTION FOR) EXPEDITED REVIEW) AND GRANTING) AUTHORITY TO) PROVIDE LOCAL) EXCHANGE SERVICES) AND FLEXIBLE) REGULATION
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This matter comes before the Public Service Commission of South Carolina (“Commission”) on the Application filed by XO Long Distance Services, Inc. (“XOLD” or “the Company”) to provide resold and facilities-based local exchange services within the State of South Carolina. Further, XOLD requests that the Commission regulate its local exchange services in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C. The Application was filed pursuant to S.C. Code Ann. Section 58-9-280 (Supp. 2002) and the applicable regulations of the Commission. Subsequent to the filing of the Application, XOLD requested expedited review and disposition of the Application.

The Commission’s Executive Director instructed the Company to publish a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to provide notice of the Application

to any interested parties and to advise interested parties of the manner and time in which to file pleadings to participate in the docket. The Applicant filed Affidavits of Publication as proof that it had complied with the instructions of the Executive Director.

Thereafter, counsel for the South Carolina Telephone Coalition (“SCTC”) filed with the Commission a Stipulation in which XOLD stipulated that it is not seeking authority in non-rural local exchange (“LEC”) service areas of South Carolina at this time and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until XOLD provided written notice of its intent prior to the date of the intended service. XOLD also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. XOLD agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC stated that it does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to XOLD to provide local services provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

MOTION FOR EXPEDITED REVIEW

XOLD filed a request for Expedited Review of its Application. In furtherance of its request for expedited review, XOLD filed verified testimony in support of its Application to permit it to provide local exchange service to customers located in the State of South Carolina. After XOLD filed its Motion for Expedited Review with the

accompanying verified testimony, the Commission Staff brought the matter to the Commission for consideration.

Upon consideration of XOLD's request for expedited review, the Commission finds that expedited review should be granted. By its request, XOLD waives its right to a formal hearing. The Commission finds that notice of the Application was properly afforded to the public. The Commission finds that procedural due process was afforded in this matter and further finds that the Applicant makes a knowing waiver of a formal hearing. Therefore, the Commission will consider the Application in the context of its regularly scheduled weekly meeting, with court reporter present, and for purposes of the expedited review, the Commission will deem the examination of the Application and verified testimony during the course of the Commission's regularly scheduled meeting with court reporter present as a hearing on this matter.

EXAMINATION OF THE APPLICATION AND VERIFIED TESTIMONY

According to the Application, XOLD is requesting authority from the Commission to provide resold and facilities-based local exchange services to both residential and business customers. The Company filed the verified testimony of Douglas Kinkoph, Vice President of Regulatory Affairs. As Vice President of Regulatory Affairs, Mr. Kinkoph is responsible for developing and implementing the regulatory policies of XOLD.

Mr. Kinkoph began his career with the Public Utilities Commission of Ohio in 1985 as a Telecommunications Analyst. He joined LiTel Communications in 1986 as a Tariff Analyst. LiTel Communications later became LCI International. At LCI, Mr.

Kinkoph held various management positions which culminated with him becoming the Vice President of Regulatory and External Affairs. Mr. Kinkoph has over seventeen years of telecommunications experience and has a Masters Degree in Administration from Central Michigan University and a Bachelor of Science in Telecommunications Management from Ohio University.

XOLD is a corporation organized and existing under the laws of the State of Washington and is a wholly-owned subsidiary of XO Communications, Inc. (XO), a Delaware corporation. XOLD was incorporated on December 11, 1997. Both companies are headquartered at 1111 Sunset Hills Road, Reston, Virginia 20190. XOLD seeks to expand its authority to provide telecommunications services on a statewide basis in South Carolina to include facilities-based and resold local exchange telecommunications services. XOLD is already certificated to provide interexchange services within the State of South Carolina.

Mr. Kinkoph opined that XOLD's technical staff has designed, managed, and/or operated advanced communications facilities throughout the United States. Furthermore, XOLD's management team includes individuals with substantial experience in successfully developing, growing, and operating telecommunications businesses. The Company's management team has experience in various segments of the telecommunications industry.

Regarding XOLD's financial ability to operate as a telecommunications carrier, Mr. Kinkoph testified that upon emergence from bankruptcy earlier this year, XO has benefited from a major reduction in debt and the creation of a new credit facility.

According to the testimony, XOLD has sufficient capital on hand to fund the development and operation of its telecommunications network in South Carolina and to meet any lease and ownership obligations associated with its provision of local exchange and interexchange services. XO's SEC Form 10-Q filing for the quarterly period ended March 31, 2003, includes condensed consolidated balance sheets, statements of operations and statement of cash flows. XOLD has approximately \$288.8 million in cash and cash equivalents, and \$259.6 million in marketable securities, resulting in a total of \$538.4 million available for the expansion of its business.

XOLD seeks authority from the Commission to provide full scale telecommunications and data services. XOLD intends to operate as a competitive local exchange service provider on a facilities-based and resale basis, as well as continue to operate as an interexchange service provider on a resale basis within the State of South Carolina. Specifically, XOLD seeks additional authority to provide a full array of facilities-based and resold local exchange services. XOLD has no current plans to deploy equipment or facilities in South Carolina. XOLD may, however, expand its network into South Carolina if economically feasible in the future.

Services will be billed monthly by XOLD at the rates specified in its tariffs. Bills will include a toll-free number for inquiries or complaints. In addition to South Carolina, XOLD is in the process of seeking authorization to provide local exchange and/or interexchange telecommunications services in Alabama, Connecticut, Kentucky, Louisiana, Maine, New Hampshire, Rhode Island, Vermont, and West Virginia. XOLD

is authorized to provide long distance services in numerous states including Alabama, New Hampshire, North Dakota, and Wyoming.

According to the testimony, XOLD has not determined exactly how it will market its services; however, the Company anticipates that it will use print and electronic media advertising. Further, XOLD has no current plans to use telemarketing as a method for selling its services. The Company will offer comprehensive customer service, providing support throughout the relationship with each customer. Mr. Kinkoph testified that XOLD's customer service center will be staffed by fully trained professionals who will be prepared to assist clients with any request.

XOLD requests a waiver of the requirements of 26 S.C. Regs. 103-610 that require a carrier to keep all records required by the Commission's rules and regulations within the State of South Carolina. Because the Company's corporate offices are in Reston, Virginia, maintaining XOLD's books and records in South Carolina would be unduly burdensome. The testimony reveals that XOLD will have a registered agent in South Carolina and will bear any costs associated with the Commission's inspection of its books and records. Additionally, XOLD also requests that it be granted a waiver of the requirement that XOLD publish its customers' names in its own telephone directory. XOLD intends to make arrangements with the applicable ILECs to have XOLD customer names published in their directories. XOLD requests that the Commission waive its policy for use of the USOA method of accounting; the Company requests that it be allowed to utilize the GAAP method of accounting.

The Company also requests that the Commission regulate its local exchange telecommunications services in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C. Specifically, XOLD requests that the Commission adopt for the Company a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels. Further, XOLD requests that its tariff filings be presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filings, in which case such tariff filings would be suspended pending further order of the Commission, and that any tariff filing will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

Upon review and consideration of the Application, the verified testimony of Mr. Kinkoph, and the applicable law, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. XOLD is a corporation organized under the laws of the State of Washington. XOLD received authority from this Commission to provide interexchange telecommunications services in South Carolina in Docket No. 1999-374-C, Order No. 2000-455.

2. XOLD has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280 (B)(1) (Supp. 2002).

3. The Commission finds that XOLD's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B)(3) (Supp. 2002).

4. The Commission finds that XOLD will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280 (B)(4) (Supp. 2002).

5. The Commission finds that XOLD will provide services which will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280(B)(2) (Supp. 2002).

6. The Commission finds that the provision of local exchange service by XOLD "does not otherwise adversely impact the public interest." S.C. Code Ann. Section 58-9-280 (B)(5) (Supp. 2002).

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to XOLD to provide resold and facilities-based local exchange telecommunications services in the State of South Carolina. The terms of the Stipulation between XOLD and the SCTC (attached hereto as Exhibit 1) are approved and adopted as a portion of this Order. Any proposal to provide local services to rural service areas is subject to the terms of the Stipulation. In accordance with the Stipulation, XOLD may not provide any local service to a customer located in a rural incumbent LEC's service area, unless or until XOLD provides such rural incumbent LEC and the Commission, written notice of its intent to do so at least

thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. The Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while it conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon a showing of good cause. It is specifically provided that all rights under Federal and State law are reserved to the rural incumbent LECs, and this Order in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications as they may be entitled. If, after notice from XOLD that it intends to serve a customer located in a rural incumbent LEC's service area, and the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or if the Commission institutes a proceeding of its own, no service may be provided by XOLD in a rural incumbent LEC's service area pursuant to this Order without prior and further Commission approval.

2. XOLD shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings comporting with South Carolina law in all matters. XOLD's local telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C.

Specifically, the Commission adopts for XOLD's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, XOLD's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

3. XOLD shall resell or utilize the services or facilities of only those companies authorized to provide telecommunications services in South Carolina by this Commission.

4. XOLD shall conduct its business in compliance with Commission decisions and Orders, both past and future, including, but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

5. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs XOLD to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be

operating. Contact with the appropriate 911 service authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association ("SC NENA") with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, XOLD shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

6. XOLD shall file annual information in the form of annual reports and gross receipts reports as required by the Commission. Both the annual report and the gross receipts report will necessitate the filing of intrastate information. Therefore, XOLD shall keep financial records on an intrastate basis for South Carolina in order to comply with the Commission's requirements of filing an annual report and a gross receipts report. The proper form for filing annual financial information for the annual report may be found on the Commission's website at www.psc.state.sc.us/forms. The title of this form is "Annual Report for CLECs." The Company shall file the annual report form with the Commission by April 1st of each year.

Commission gross receipts forms are due to be filed with the Commission no later than August 31st of each year. The appropriate form for remitting information for gross

receipts is entitled “Gross Receipts Form for Utility Companies” and may be found on the Commission’s website at www.psc.state.sc.us/forms.

Additionally, XOLD shall file with the Commission a quarterly report entitled “CLEC Service Quality Quarterly Report.” The proper form for this report is found on the Commission’s website at www.psc.state.sc.us/forms.

7. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

XOLD shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The form the Company shall use to file this authorized utility representative information can be found at the Commission's website at www.psc.state.sc.us/forms. This form is entitled "Authorized Utility Representative Information." Further, the Company shall promptly notify the Commission in writing if the representatives are replaced. XOLD shall also file with the Commission, with its Final Tariff, a copy of its general Bill Form as required by S.C. Code Regs. 103-612.2 and 103-622 (1976 and Supp. 2002).

8. XOLD shall file annually the Intrastate State Universal Service Fund (USF) worksheet due August 15 for calendar and fiscal year ending companies.

9. The Federal Communications Commission (FCC) in July of 2000 required all telecommunications carriers throughout the United States to implement three-digit, 711, dialing for access to all Telecommunications Relay Services (TRS). The Commission issued a memorandum in March of 2001 instructing all South Carolina telecommunications carriers to implement the service completely by October of 2001. All competitive local exchange carriers (CLECs) and incumbent local exchange carriers (ILECs) were instructed to include language in their tariffs introducing 711 as a new service offering with deployment by July 1, 2001, and to translate 711 dialed calls to 1-800-735-2905. All Payphone Service Providers (PSPs) were instructed to modify their programmable phones to translate calls dialed as 711 to the assigned TRS toll free number 1-800-735-2905 in order to route 711 calls to the TRS provider before October 2, 2001. Additionally, telephone directories were required to be updated and bill inserts promoting 711 were also required. This Company must comply with the applicable mandates. For complete information on compliance with this FCC and Commission requirement, go to the Commission's website at www.psc.state.sc.us/forms.

10. The Company's request to utilize the GAAP method of accounting is granted. We also grant the Company's request for a waiver of 26 S.C. Code Ann. Regs. 103-610 because the Company's corporate offices are in Reston, Virginia. Requiring the Company to maintain its books and records in South Carolina would be unduly burdensome. XOLD's request for a waiver of the requirement that the Company be required to publish its customers' names in its own telephone directory is also granted. XOLD intends to make arrangements with the applicable ILECs to have XOLD customer

names published in their directories; therefore, it would be unduly burdensome to require XOLD to publish its own directory containing customers' names, addresses and phone numbers.

11. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Mignon L. Clyburn
Chairman

ATTEST:

Gary E. Walsh
Executive Director

(SEAL)